IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12478 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HARILAL R PARMAR

Appearance:

MRS VASAVDATTA BHATT for the Petitioner.

MR TR MISHRA for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/08/2001

ORAL JUDGEMENT

1. Rule. Mr.Mishra waives service of rule on behalf of the respondent.

2. The Presiding Officer, Labour Court, Rajkot, in Recovery Application No.94 of 1999, has issued recovery certificate for the sum of Rs.81,654.40 Ps. in favour of the present respondent. The said order is challenged in

the present petition.

3. It is argued by Mr.Mishra, learned Advocate for the respondent-workman, that before the Labour Court, the workman has given a chart, stating the amount which he was entitled to recover. The Presiding Officer, Labour Court, has also discussed the said aspect in paragraph 5 of his order. In fact, opportunity was given to the present petitioner to submit their say before the Labour Court, and the calculation given by the workman, which was submitted on affidavit, was accepted by the Labour Court at the time of granting the certificate.

4. On behalf of the S.T. Corporation, learned Advocate for the petitioner states that the amount calculated by the concerned workman is not correct and as per the S.T. Corporation, the amount payable is Rs.14,283/- and the said amount has already been paid. However, this point has not been pointed out before the Labour Court at the relevant time. It is required to be noted that the S.T. Corporation has not led any evidence before the Presiding Officer, Labour Court and in the present petition, this Court cannot, for the first time, decide all these disputed questions of fact. It was the duty of the S.T. Corporation to produce necessary material and if the amount calculated by the respondent-workman is not correct, the S.T. Corporation could have placed that calculation on record of the Labour Court. Since this has not been done, this Court cannot decide all these questions of fact in this petition.

5. Mrs.Vasavdatta Bhatt, learned Advocate appearing for the petitioner, however, submitted that the petitioner may be given an opportunity to file appropriate application before the Labour Court by way of review and opportunity may be given to the petitioner to produce appropriate evidence before the Labour court, showing the correct amount. However, this Court is not expressing any opinion on this aspect. If any application is filed by the petitioner-Corporation, the Labour Court may decide the same in accordance with law. This Court has not expressed any opinion on this aspect of the case and it is for the Labour Court to take a decision in this connection.

6. Mr.Mishra, learned Advocate for the respondent-workman, states that he has no objection if the petitioner again places appropriate material before the Labour Court on or before 10th September, 2001. He, however, states that since the petitioner has shown total

negligence and the Officer concerned has not taken care to adduce appropriate evidence before the Labour Court, some cost may be awarded to the respondent-workman. However, in order to see that there may not be any financial loss to the S.T. Corporation, this last opportunity is given to the S.T. Corporation.

In the facts and circumstances of the case and in view of the aforesaid concession given by Mr.Mishra, the petitioner-Corporation is permitted to submit their evidence before the Labour Court, latest by 10th September, 2001. If any such claim is produced, it would be open for the respondent-workman to lead further evidence before the Labour Court in this behalf and after hearing both the sides, the Labour Court may pass appropriate order again in accordance with law. However, in view of the fact that the S.T. Corporation was totally negligent, the Corporation is directed to pay costs of Rs.5,000/- immediately in any case on or before 10th of September, 2001. The said amount may be deposited before the Labour Court and it would be open for the respondent to withdraw the said amount. The order of the Labour Court is accordingly modified and the matter is remanded to the Labour Court to take fresh decision, as stated above. The Labour Court may dispose of the matter finally, latest by 31st December, 2001.

Petition is accordingly allowed to the aforeaid extent. Rule is partly made absolute with no order as to costs.

20th August, 2001 (P.B. Majmudar, J.)

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(apj)